

# Planning Commission

## Staff Report

March 16, 2023



<b>Case No:</b>	21-ZONE-0136
<b>Project Name:</b>	Mount Washington Road Apartments
<b>Location:</b>	5604, 5606, 5612, 5614 & 5616 Mt. Washington Road
<b>Owner(s):</b>	Gloria & Clinton Walker, Bobby Wilson
<b>Applicant:</b>	Highgates Management
<b>Jurisdiction:</b>	Louisville Metro
<b>Council District:</b>	23 – Jeff Hudson
<b>Case Manager:</b>	Dante St. Germain, AICP, Planner II

### REQUESTS

- **Change in zoning** from R-4 Single Family Residential to R-7 Multi-Family Residential
- **Waiver** from 10.2.4.B.3 to permit a utility easement to overlap required Landscape Buffer Areas by more than 50% (22-WAIVER-0088)
- **Detailed District Development Plan/Major Preliminary Subdivision** with Binding Elements

### CASE SUMMARY/BACKGROUND

The subject site is located along Mt. Washington Road across from the intersection with Ray Nan Drive and consists of five contiguous parcels currently developed with large-lot single-family residences. The applicant proposes to rezone the property in order to construct a new 666-unit multi-family development. The existing residences are not proposed to be preserved.

Mt. Washington Road is a primary collector at this location. The site is generally surrounded by single-family and large-lot single-family development. Preston Highway and the commercial development along it is located nearby to the west.

### STAFF FINDING

Staff finds that the proposed zoning change meets the guidelines of the Comprehensive Plan. The waiver is adequately justified and meets the standard of review. The site plan meets the requirements of the Land Development Code with the exception of the requested waiver, and generally meets the guidelines of the Comprehensive Plan.

### TECHNICAL REVIEW

Plan 2040

Land Development Code (Louisville Metro)

MSD and Transportation Planning have provided preliminary approval of the proposal.

## **INTERESTED PARTY COMMENTS**

Staff has received several interested party comments in opposition to the request.

## **STANDARD OF REVIEW FOR REZONING**

Criteria for granting the proposed form district change/rezoning: KRS Chapter 100.213

1. The proposed form district/rezoning change complies with the applicable guidelines and policies Plan 2040; **OR**
2. The existing form district/zoning classification is inappropriate and the proposed classification is appropriate; **OR**
3. There have been major changes of an economic, physical, or social nature within the area involved which were not anticipated in Plan 2040 which have substantially altered the basic character of the area.

## **STAFF ANALYSIS FOR CHANGE IN ZONING**

The site is located in the Neighborhood Form District

The Neighborhood Form is characterized by predominantly residential uses that vary from low to high density and that blend compatibly into the existing landscape and neighborhood areas. High-density uses will be limited in scope to minor or major arterials and to areas that have limited impact on the low to moderate density residential areas.

The Neighborhood Form will contain diverse housing types in order to provide housing choice for differing ages, incomes and abilities. New neighborhoods are encouraged to incorporate these different housing types within a neighborhood as long as the different types are designed to be compatible with nearby land uses. These types may include, but not be limited to, large lot single family developments with cul-de-sacs, traditional neighborhoods with short blocks or walkways in the middle of long blocks to connect with other streets, villages and zero-lot line neighborhoods with open space, and high density multi-family housing.

The Neighborhood Form may contain open space and, at appropriate locations, civic uses and neighborhood centers with a mixture of uses such as offices, retail shops, restaurants and services. These neighborhood centers should be at a scale that is appropriate for nearby neighborhoods. The Neighborhood Form should provide for accessibility and connectivity between adjacent uses and neighborhoods by automobile, pedestrian, bicycle and transit.

Neighborhood streets may be either curvilinear, rectilinear or in a grid pattern and should be designed to support physical activity for all users and invite human interaction. Streets are connected and easily accessible to each other, using design elements such as short blocks or bike/walkways in the middle of long blocks to connect with other streets. Examples of design elements that encourage this interaction include narrow street widths, street trees, sidewalks, shaded seating/gathering areas and bus stops. Placement of utilities should permit the planting of shade trees along both sides of the streets.

Following is staff's analysis of the proposed rezoning against the Goals, Objectives and Policies of Plan 2040.

The site has adequate access to Preston Highway at the Mt. Washington Road intersection. This intersection currently has impaired function due to the configuration of the lanes. The applicant will improve the intersection configuration to improve the flow of traffic through the intersection, widening

the road to accommodate more turning movements. Additionally, access to the site will be improved by the provision of new sidewalks along Mt. Washington Road.

Preston Highway is a partially-developed commercial corridor at this location, with goods and services readily available nearby. While transit is not available along this section of Preston Highway currently, the developing commercial corridor along with the proposed zoning district, which would permit higher-density residential development, may reasonably attract transit in the future. A major employment center is accessible from the site.

The proposed zoning district is generally in compliance with the plan elements and CHASE principles of Plan 2040. All other agency comments should be addressed to demonstrate compliance with the remaining Goals, Objectives and Policies of Plan 2040.

A checklist is attached to the end of this staff report with a more detailed analysis. The Louisville Metro Planning Commission is charged with making a recommendation to the Louisville Metro Council regarding the appropriateness of this zoning map amendment. The Louisville Metro Council has zoning authority over the property in question.

### **STANDARD OF REVIEW AND STAFF ANALYSIS FOR WAIVER OF SECTION 10.2.4.B.3**

- (a) The waiver will not adversely affect adjacent property owners; and

STAFF: The waiver will not adversely affect adjacent property owners as the required plantings will still be provided outside the overlap area.

- (b) The waiver will not violate specific guidelines of Plan 2040; and

STAFF: The waiver will not violate specific guidelines of Plan 2040 as Plan 2040 encourages appropriate buffering and transitions between uses that are significantly different in density or intensity. The adjacent property will be adequately buffered.

- (c) The extent of the waiver of the regulation is the minimum necessary to afford relief to the applicant; and

STAFF: The extent of the waiver of the regulation is the minimum necessary to afford relief to the applicant as the easement is required and the LBA cannot be moved to eliminate the overlap.

- (d) Either:

(i) The applicant has incorporated other design measures that exceed the minimums of the district and compensate for non-compliance with the requirements to be waived (net beneficial effect); OR

(ii) The strict application of the provisions of the regulation would deprive the applicant of the reasonable use of the land or would create an unnecessary hardship on the applicant.

STAFF: Strict application of the provisions of the regulation would deprive the applicant of the reasonable use of the land or would create an unnecessary hardship on the applicant because removing the overlap would seriously impact the development.

## STANDARD OF REVIEW AND STAFF ANALYSIS FOR DDDP

- (a) The conservation of natural resources on the property proposed for development, including: trees and other living vegetation, steep slopes, water courses, flood plains, soils, air quality, scenic views, and historic sites;

STAFF: The site is mostly cleared at this time. Tree canopy will be provided as required by the Land Development Code.

- (b) The provisions for safe and efficient vehicular and pedestrian transportation both within the development and the community;

STAFF: Provisions for safe and efficient vehicular and pedestrian transportation within and around the development and the community has been provided, and Metro Public Works has approved the preliminary development plan.

- (c) The provision of sufficient open space (scenic and recreational) to meet the needs of the proposed development;

STAFF: Open space is being provided in compliance with the requirements of the Land Development Code.

- (d) The provision of adequate drainage facilities on the subject site in order to prevent drainage problems from occurring on the subject site or within the community;

STAFF: The Metropolitan Sewer District has approved the preliminary development plan and will ensure the provision of adequate drainage facilities on the subject site in order to prevent drainage problems from occurring on the subject site or within the community.

- (e) The compatibility of the overall site design (location of buildings, parking lots, screening, landscaping) and land use or uses with the existing and projected future development of the area;

STAFF: The overall site design is in compliance with existing and planned future development in the area. The proposal would provide an increase in the variety of housing in the neighborhood by permitting higher-density multi-family housing near a developing commercial corridor and major arterial street.

- (f) Conformance of the development plan with the Comprehensive Plan and Land Development Code. Revised plan certain development plans shall be evaluated for conformance with the non-residential and mixed-use intent of the form districts and comprehensive plan.

STAFF: The development plan conforms to applicable guidelines and policies of the Land Development Code and Plan 2040.

## REQUIRED ACTIONS

- **RECOMMEND** that Metro Council **APPROVE** or **DENY** the **Change-in-Zoning** from R-4 to R-7
- **APPROVE** or **DENY** the **Waiver**
- **APPROVE** or **DENY** the **Detailed District Development Plan/Major Preliminary Subdivision** with **Binding Elements**

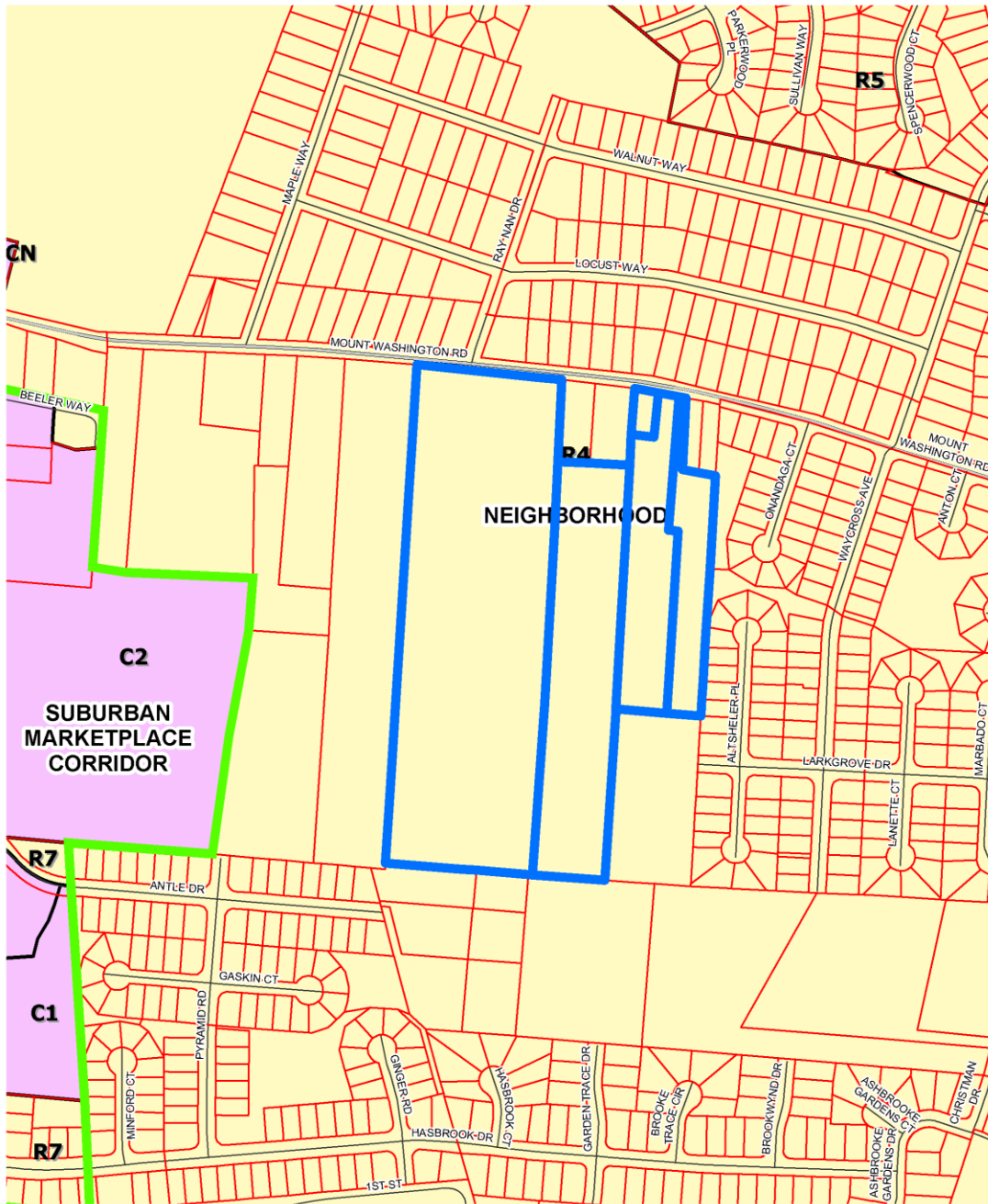
**NOTIFICATION**

<b>Date</b>	<b>Purpose of Notice</b>	<b>Recipients</b>
<b>11/22/2022</b>	Hearing before LD&T	1 <sup>st</sup> and 2 <sup>nd</sup> tier adjoining property owners and current residents Registered Neighborhood Groups in Council District 23
<b>03/02/2023</b>	Hearing before PC	1 <sup>st</sup> and 2 <sup>nd</sup> tier adjoining property owners and current residents Registered Neighborhood Groups in Council District 23
<b>02/27/2023</b>	Hearing before PC	Sign Posting on property
<b>03/05/2023</b>	Hearing before PC	Legal Advertisement in the Courier-Journal

**ATTACHMENTS**

1. Zoning Map
2. Aerial Photograph
3. Staff Plan 2040 Checklist
4. Proposed Binding Elements

1. Zoning Map



Mt. Washington Road Apts

feet



450

Map Created: 12/2/2022



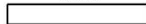
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2. Aerial Photograph



Mt. Washington Road Apts

feet



450

Map Created: 12/2/2022



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### 3. Staff Plan 2040 Checklist

- + Exceeds Guideline
- ✓ Meets Guideline
- Does Not Meet Guideline
- +/- More Information Needed
- NA Not Applicable

#### Neighborhood: Residential

#	Plan 2040 Plan Element	Land Use & Development Policy	Staff Finding	Staff Analysis
1	Community Form: Goal 1	7. Locate higher density and intensity uses near major transportation facilities and transit corridors, employment centers, in or near activity centers and other areas where demand and adequate infrastructure exists or is planned.	✓	The site is located near a major activity center along Preston Highway, and relatively near a major employment center at Commerce Crossing.
2	Community Form: Goal 1	9. Ensure an appropriate transition between uses that are substantially different in scale and intensity or density of development. The transition may be achieved through methods such as landscaped buffer yards, vegetative berms, compatible building design and materials, height restrictions and setback requirements.	✓	Appropriate transitions will be provided between the proposed development and the surrounding development.
3	Community Form: Goal 2	9. Encourage new developments and rehabilitation of buildings that provide commercial, office and/or residential uses.	✓	The proposal would provide new developments providing residential uses.
4	Community Form: Goal 3	10. Encourage development to avoid wet or highly permeable soils, severe, steep or unstable slopes where the potential for severe erosion problems exists in order to prevent property damage and public costs associated with soil slippage and foundation failure and to minimize environmental degradation.	-	No severe, steep or unstable slopes are evident on the site. A small portion of jurisdictional wetland is located on the site and is not proposed to be preserved.
5	Community Form: Goal 4	2. Encourage preservation of distinctive cultural features including landscapes, natural elements and built features.	✓	No distinctive cultural features are evident on the site.



#	Plan 2040 Plan Element	Land Use & Development Policy	Staff Finding	Staff Analysis
6	Community Form: Goal 4	3. Encourage preservation and/or adaptive reuse of historic sites listed on or eligible for the National Register of Historic Places and/or recognized by the Louisville Metro Landmarks Commission or other national, state or local government historic preservation agencies.	✓	No historic sites are evident on the site.
7	Mobility: Goal 1	4. Encourage higher densities and intensities within or near existing marketplace corridors, existing and future activity centers, and employment centers to support transit-oriented development and an efficient public transportation system.	✓	The site is located close to Preston Highway, a major arterial and developing commercial corridor. Suburban Marketplace Corridor form is located along Preston Highway.
8	Mobility: Goal 2	4. Avoid access to development through areas of significantly lower intensity or density development if such access would create significant nuisances.	✓	Access to the site is via Mt. Washington Road, a primary collector at this location. Access to the site is not through areas of significantly lower intensity or density development.
9	Mobility: Goal 3	2. To improve mobility, and reduce vehicle miles traveled and congestion, encourage a mixture of compatible land uses that are easily accessible by bicycle, car, transit, pedestrians and people with disabilities. Housing should be encouraged near employment centers.	✓	The site is easily accessible by car and bicycle. Access by pedestrians and people with disabilities will be improved by the development. Access to transit may improve in the future as the corridor develops further.
10	Mobility: Goal 3	5. Evaluate developments for their impact on the transportation network (including the street, pedestrian, transit, freight movement and bike facilities and services) and air quality.	✓	Transportation Planning has approved the proposal.
11	Mobility: Goal 3	6. Ensure that those who propose new developments bear or share in rough proportionality the costs of transportation facilities and services made necessary by development.	✓	Transportation Planning has approved the proposal.
12	Mobility: Goal 3	9. When existing transportation facilities and services are inadequate and public funds are not available to rectify the situation, the developer may be asked to make improvements, roughly proportional to the projected impact of the proposed development, to eliminate present inadequacies if such improvements would be the only means by which the development would be considered appropriate at the proposed location.	✓	Transportation Planning has approved the proposal.

#	Plan 2040 Plan Element	Land Use & Development Policy	Staff Finding	Staff Analysis
13	Mobility: Goal 3	<b>10.</b> Ensure that necessary improvements occur in accordance with long-range transportation plans and level of mobility criteria for all modes of travel.	✓	Transportation Planning has approved the proposal.
14	Mobility: Goal 3	<b>21.</b> Prevent safety hazards caused by direct residential access to high speed roadways.	✓	No direct residential access to high-speed roadways is proposed.
15	Community Facilities: Goal 2	<b>1.</b> Locate development in areas served by existing utilities or capable of being served by public or private utility extensions.	✓	The relevant utilities have approved the proposal.
16	Community Facilities: Goal 2	<b>2.</b> Ensure that all development has an adequate supply of potable water and water for fire-fighting purposes. Locate only very low-density land uses on sites that use on-lot sewage disposal systems or on a private supply of potable water.	✓	Louisville Water Company has approved the proposal.
17	Community Facilities: Goal 2	<b>3.</b> Ensure that all development has adequate means of sewage treatment and disposal to protect public health and to protect water quality in lakes and streams as determined by the Metropolitan Sewer District (MSD).	✓	MSD has approved the proposal.
18	Livability: Goal 1	<b>5.</b> Encourage development that recognizes and incorporates the unique characteristics of identified general landscape types and native plant communities (e.g., upland hardwood forest) throughout Louisville Metro.	✓	Tree canopy will be provided in compliance with the Land Development Code.
19	Livability: Goal 1	<b>17.</b> Determine site susceptibility to erosion; identify the presence of on-site carbonate conditions and features that are vulnerable to site disturbance; identify the extent of existing groundwater use and the impacts of the project on groundwater resources, flow patterns, and existing and proposed surface drainage. Then mitigate potential hazards to such systems resulting from the project.	✓	No karst features are evident on the site.
20	Livability: Goal 1	<b>21.</b> Mitigate negative development impacts to the integrity of the regulatory floodplain by encouraging development patterns that minimize disturbance and consider the increased risk of more frequent flooding events.	✓	The site is not located in the floodplain.

#	Plan 2040 Plan Element	Land Use & Development Policy	Staff Finding	Staff Analysis
21	Housing: Goal 1	1. Encourage a variety of housing types including, but not limited to, detached and attached single family, multi-family, mixed use, zero lot line, average lot, cluster, and co-housing. Allow for accessory residential structures and apartments. Housing types should reflect the Form District pattern.	✓	The proposal would increase the variety of housing types and price points in the neighborhood.
22	Housing: Goal 1	2. Promote housing options and environments that support aging in place. Encourage housing for older adults and people with disabilities to be located close to shopping and transit routes and, when possible, medical and other supportive facilities.	✓	The proposal would support aging in place by increase the variety of ownership options and price points in the neighborhood, allowing aging populations to downscale without leaving their neighborhood.
23	Housing: Goal 2	1. Encourage inter-generational, mixed-income and mixed-use development that is connected to the neighborhood and surrounding area.	✓	The proposal would encourage inter-generational mixed-income development that is connected to the neighborhood and surrounding area.
24	Housing: Goal 2	2. Locate housing within proximity to multi-modal transportation corridors providing safe and convenient access to employment opportunities, as well as within proximity to amenities providing neighborhood goods and services. Higher density, accessible residential uses should be located along transit corridors and in or near activity centers.	✓	The proposal is not for higher density zoning. The site is in proximity to an employment center and an established activity center.
25	Housing: Goal 3	1. Encourage provision of fair and affordable housing by providing a variety of ownership options and unit costs throughout Louisville Metro. Expand opportunities for people to live in quality, variably priced housing in locations of their choice by encouraging affordable and accessible housing in dispersed locations throughout Louisville Metro.	✓	The proposal would encourage provision of fair and affordable housing by increasing the variety of ownership options and unit costs in Louisville Metro.
26	Housing: Goal 3	2. As neighborhoods evolve, discourage displacement of existing residents from their community.	✓	No existing residents will be displaced by the proposal.
27	Housing: Goal 3	3. Encourage the use of innovative methods such as clustering, mixed-use developments, co-housing, and accessory apartments to increase the production of fair and affordable housing.	✓	The proposed zoning district would permit innovative methods of housing.

#### 4. Proposed Binding Elements

1. The development shall be in accordance with the approved district development plan, all applicable sections of the Land Development Code (LDC) and agreed upon binding elements unless amended pursuant to the Land Development Code. Any changes/additions/alterations of any binding element(s) shall be submitted to the Planning Commission or the Planning Commission's designee for review and approval; any changes/additions/alterations not so referred shall not be valid.
2. No outdoor advertising signs, small freestanding signs, pennants, balloons, or banners shall be permitted on the site.
3. Construction fencing shall be erected when off-site trees or tree canopy exists within 3' of a common property line. Fencing shall be in place prior to any grading or construction to protect the existing root systems from compaction. The fencing shall enclose the entire area beneath the tree canopy and shall remain in place until all construction is completed. No parking, material storage or construction activities are permitted within the protected area.
4. Before any permit (including but not limited to building, parking lot, change of use, site disturbance, alteration permit or demolition permit) is requested:
  - a. The development plan must receive full construction approval from Construction Review, Louisville Metro Public Works and the Metropolitan Sewer District.
  - b. Encroachment permits must be obtained from the Kentucky Transportation Cabinet for any work done in the Mt. Washington Road or Preston Highway right-of-way.
  - c. The property owner/developer must obtain approval of a detailed plan for screening (buffering/landscaping) as described in Chapter 10 prior to requesting a certificate of occupancy. Such plan shall be implemented prior to occupancy of the site and shall be maintained thereafter.
  - d. A Tree Preservation Plan in accordance with Chapter 10 of the LDC shall be reviewed and approved prior to obtaining approval for site disturbance.
  - e. The materials and design of proposed structures shall be substantially the same as depicted in the rendering as presented at the March 16, 2023 Planning Commission meeting. A copy of the approved rendering is available in the case file on record in the offices of the Louisville Metro Planning Commission.
  - f. The applicant shall make improvements to the intersection at Mt. Washington Road and Preston Highway, and to Mt. Washington Road, including sidewalks, in a manner substantially similar to that shown at the March 16, 2023 Planning Commission hearing and located in the case file as "Conceptual Striping Plan", subject to Public Works and/or Kentucky Transportation Cabinet approval. These improvements shall be bonded at site construction plan approval. All improvements shall be completed no later than issuance of the certificate of occupancy for the 133<sup>rd</sup> dwelling unit.
5. A certificate of occupancy must be received from the appropriate code enforcement department prior to occupancy of the structure or land for the proposed use. All binding elements requiring action and approval must be implemented prior to requesting issuance of the certificate of occupancy, unless specifically waived by the Planning Commission.
6. The applicant, developer, or property owner shall provide copies of these binding elements to tenants, purchasers, contractors, subcontractors and other parties engaged in development of this site and shall advise them of the content of these binding elements. These binding elements shall run with the land and the owner of the property and occupant of the property shall at all times be responsible for compliance with these binding elements. At all times during

development of the site, the applicant and developer, their heirs, successors; and assignees, contractors, subcontractors, and other parties engaged in development of the site, shall be responsible for compliance with these binding elements.

7. The development shall be limited to 199 units until a second separate access roadway connecting directly to an existing roadway is obtained pursuant to LDC 6.1.3.
8. The applicant shall either provide a stub to the property at 12115 Christman Drive or connect to the extended Garden Trace Drive, depending on the state of development of the approved preliminary subdivision plan for docket 21-MSUB-0012, Ashbrook Gardens Section 3, in compliance with LDC 5.9.2.A.1.a.